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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,684	05/04/2001	Paul Amaat France	8390	8926

27752 7590 10/27/2003

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

PERRIN, JOSEPH L

ART UNIT	PAPER NUMBER
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1746

DATE MAILED: 10/27/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/849,684	Applicant(s) FRANCE ET AL.	
	Examiner Joseph L. Perrin, Ph.D.	Art Unit 1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-17, 19, 22-30 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 23-30 and 34-38 is/are rejected.
- 7) ☒ Claim(s) 16-17, 19, 22, 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>11</u> . | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 17 September 2003 has been entered.

Response to Arguments

2. In view of applicant's amendment filed 17 September 2003 (Paper No. 13), the status of the application is as follows:

Oath/Declaration Objection

3. The substitute declaration has been approved by the Examiner.

Specification Objections

4. The objection of the specification has been withdrawn in view of applicant's persuasive arguments. No new matter has been introduced.

Rejections under 35 U.S.C. §112, first paragraph

5. The 112, first paragraph, claims rejections have been withdrawn in view of applicant's persuasive arguments. No new matter has been introduced.

Rejections under 35 U.S.C. §112, second paragraph

6. The 112, second paragraph, claims rejections have been withdrawn in view of Applicant's amendment correcting the improper means-plus-function limitations.

35 U.S.C. §102(b) Rejections

7. The 102 rejection over Naya *et al.* have been maintained for reasons set forth below.

8. In response to applicant's argument that in Naya *et al.*, "the semiconductor detecting element, the heating device and the temperature compensating circuit are all elements of the gas sensor and control the internal operation of the gas sensor", this is not persuasive because this does not negate the fact that applicant's claimed structure of a system having two means for sensing (e.g. a gas and a condition) and a signal processor operatively connected to each sensing means, reads on the system disclosed by Naya *et al.* Moreover, it is noted that the gas sensor disclosed by Naya *et al.* does not include the condition sensor (thermistor) of the temperature compensating circuit (see, for instance, the abstract and Figures of Naya *et al.*).

9. In response to applicant's arguments directed to the function of the claimed signal processor (*i.e.* "wherein said signal processor compares a signal...), a recitation

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of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Accordingly, the recitation of *Naya et al.* reads on applicant's claims.

35 U.S.C. §103(a) Rejections

10. The 103 rejection over *Naya et al.* and applicant's admitted prior art have been maintained for reasons set forth below.

11. In response to applicant's arguments that "based on the reason presented in the above section [in the Response]", *Naya et al.* does not render the claims obvious, the Examiner's previous comments regarding *Naya et al.* are repeated here from above.

Claim Objections

12. Claims 16-17, 19, 22 & 33 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Re claims 16-17, 19, 22 & 33, the claims fail to provide any further structural limitation to the claimed apparatus. Specifically, the claims, which are directed to the function of the means for sensing/gas sensor, *i.e.* how the sensor "cooperates" with the

signal processor to operate a cycle, are considered directed to future intended use and, therefore, given little patentable weight. Moreover, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Accordingly, these claims have not been further treated on the merits.

Claim Rejections - 35 USC § 102

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

14. Claims 15 and 23-29 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 01-277600 to Naya *et al.*

Re claim 15, Naya *et al.* discloses a drycleaning drying control system utilizing a gas sensor GS for dry cleaning solvent vapor, which is controllable by a temperature condition detector (thermistor TH), in order to control the drying cycle by "determining the terminal point in drying operation" (see, for instance, Figure 1 and the abstract of Naya *et al.*).

Re claim 23, Naya *et al.* discloses a condition sensor/detector as a temperature sensor (thermistor, see abstract).

Re claims 24-25, Naya *et al.* discloses a gas (physical property) sensor as a semiconductor detecting element (see abstract).

Re claims 26-29, as noted above, Naya *et al.* discloses a gas sensor and therefore, the position is taken that the sensor would be "capable of sensing" applicant's claimed lipophilic fluid vapors, as claimed, since lipophilic fluid vapors are construed as being a "gas". Moreover, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Claim Rejections - 35 USC § 103

15. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

16. Claims 30 and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naya *et al.*, as applied above, in view of Applicant's admitted prior art.

As noted above, Naya *et al.* discloses the claimed invention as applied to claims 15 and 23-29. However, Naya *et al.* does not expressly disclose utilizing the claimed control system in a dual mode drycleaning apparatus capable of washing and drying fabrics within the same drum.

On page 24, lines 16-19, Applicant admits that "dual mode" drycleaning "apparati are commercially available". Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been to utilize the drycleaning drying cycle control system, disclosed by Naya *et al.*, in a commercially

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available "dual mode" drycleaning apparatus, disclosed by Applicant, in order to provide improved drying efficiency to a commercially known drycleaning apparatus.

Conclusion

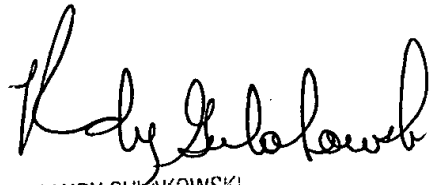
17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (703)305-0626. The examiner can normally be reached on M-F 7:30-5:00, except alternate Fridays.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (703)308-4333. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

19. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

Joseph L. Perrin, Ph.D.
Examiner
Art Unit 1746

jlp


RANDY GULAKOWSKI
SUPERVISORY PATENT EXAMINER
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